JOHN R. SOMMER (SBN 106355)
DEVON A. BECKWITH (SBN 305645)
JOHN R. SOMMER, ATTORNEY-AT-LAW
17426 Daimler Street, Suite 200
Irvine, California 92614
(949) 752-5344, Fax: (949) 752-5439

Attorneys for Plaintiff
ERIK BRUNETTI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ERIK BRUNETTI, Plaintiff, v. ARCADIA GROUP (USA) LIMITED; NORDSTROM, INC.; PROJECT SOCIAL T, LLC; Defendant.	Case No.: COMPLAINT FOR: 1. TRADEMARK INFRINGEMENT (15 U.S.C. §1114); 2. FALSE OR MISLEADING DESCRIPTIONS AND REPRESENTATIONS, AND DILUTION (15 U.S.C. §1125); 3. INFRINGEMENT OF CALIFORNIA COMMON LAW TRADEMARKS AND TRADE NAME RIGHTS (Cal. Bus. & Prof. Code §§14320, 14335 and 14340); 4. INJURY TO BUSINESS REPUTATION AND DILUTION (Cal. Bus. & Prof. Code §14330); 5. UNFAIR COMPETITION AND UNFAIR PRACTICES (Cal. Bus. & Prof. Code §§17200-17208). DEMAND FOR JURY TRIAL

Plaintiff Erik Brunetti ("Brunetti"), by its attorneys, alleges as follows:

1. This Court has subject-matter jurisdiction of this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338 as it involves claims arising under the Lanham Act and substantially related claims for unfair competition. This Court has supplemental subject-matter jurisdiction over all other claims pursuant to 28 U.S.C. §1367 because they are so related that they form part of the same case or controversy.

2. This Court has personal jurisdiction over Defendants in that they are committing acts of infringement in the State of California in the Central District of California and in the Southern Division thereof, or is committing such acts knowing or should reasonably expect that they would cause damage to a person therein. Upon information and belief, Defendants are soliciting customers in California and do a substantial amount of business in California.

3. Venue for this action is proper in the Central District of California pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events giving rise to the claim occurred in the Central District of California.

4. This is a civil action arising under the United States Trademark Act of 1946 as amended, 15 U.S.C. §1051 *et seq.* (the "Lanham Act"), for trademark infringement in violation of 15 U.S.C. §§1114 and 1116, for false or misleading descriptions and representations and dilution in violation of 15 U.S.C. §1125, and under the statutory and common law of the State of California relating to trademarks, trade names, dilution, and unfair competition (Cal. Bus. & Prof. Code §§14320, 14330, 14335, 14340 and 17200-17208).

PARTIES

5. Brunetti is an individual who is a citizen of California, having his principal place of business within the Central District of California.

6. Upon information and belief, Brunetti avers that Defendant Arcadia Group (USA) Limited is doing business as WWW.TOPSHOP.COM and is manufacturing or selling infringing items. Brunetti is further informed and believes

that Defendant Arcadia Group (USA) Limited is doing business in and committing the acts of infringement and other acts averred herein in the Central District of California and within the Southern Division thereof, and within the State of California, and is directing its activities toward persons in such state.

7. Brunetti avers that Defendant Nordstrom, Inc. is the seller and distributor of the items alleged to be infringing. Brunetti is further informed and believes that Nordstrom, Inc. is admitted to do business in California and has a registered agent in California. Brunetti is further informed and believes that Nordstrom, Inc. is doing business in and committing the acts of infringement and other acts averred herein in the Central District of California and within the Southern Division thereof, and within the State of California, and is directing its activities toward persons in such state.

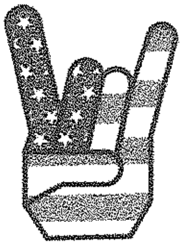
8. Brunetti avers that Defendant Project Social T, LLC is a California limited liability company doing business in and committing the acts of infringement and other acts averred herein in the Central District of California, with its principal place of business in Los Angeles, California.

9. Defendants Arcadia Group (USA) Limited, Nordstrom, Inc., and Project Social T, LLC, are hereinafter collectively referred to as "Defendant."

ALLEGATIONS IN SUPPORT OF ALL CLAIMS

10. Since as early as 1994, Brunetti has been and is now engaged in the business of promoting itself and its products. Brunetti provides a wide variety of clothing products.

11. Brunetti has used, prior to the acts of Defendant herein, the trademark, which Brunetti refers to as the "Horned Hand" Mark.



The "Horned Hand" Mark is widely recognized and understood as standing for Brunetti's and its products. Brunetti is the owner of the "Horned Hand" Mark.

12. On March 16, 2010, the "Horned Hand" Mark was registered on the Principal Register of the United States Patent & Trademark Office as Registration No. 3,761,321 for:

> "Baseball caps; Belts; Coats; Footwear; Hats; Jackets; Long-sleeved shirts; Pants; Scarves; Shirts; Short-sleeved or long-sleeved t-shirts; Shorts; Socks; Sweat pants; Sweat shirts; Sweatbands; Sweaters; T-shirts; Tank tops; Underwear; Vests; Wind resistant jackets."

A copy of this registration is attached hereto as Exhibit "1" and incorporated herein by this reference.

13. The above registration is valid, subsisting and exclusively owned by Brunetti.

14. At all times relevant hereto, the "Horned Hand" Mark has been continually used by Brunetti throughout the world and in the United States, including California, on or in connection with the manufacture, distribution, sale and promotion of Brunetti's products.

15. As a result of Brunetti's widespread and continuous use, advertisement and promotion of its products in connection with the "Horned Hand" Mark, it has become widely known and recognized as identifying Brunetti as the source of a wide variety of services, clothing and related goods and as distinguishing such goods from those of others. The "Horned Hand" Mark has come to represent and symbolize the excellent reputation of Brunetti's products and Brunetti's valuable goodwill among members of the public throughout the United States, including California. The "Horned Hand" Mark has acquired a secondary meaning in the United States, including California.

FIRST CLAIM FOR RELIEF

(Against Defendant

For Infringement of Federally-Registered Trademarks)

16. Brunetti incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

17. With actual and constructive notice of the foregoing trademark registration and of Brunetti's extensive and continuous use of the "Horned Hand" Mark, Defendant has used and infringed the "Horned Hand" Mark by offering for sale, selling and distributing products that bear a copy and close reproduction of the "Horned Hand" Mark.

18. Defendant's products bear marks that are substantially indistinguishable from Brunetti's "Horned Hand" Mark, and therefore, are the use of counterfeits marks within the meaning of 15 U.S.C. §1116(c).

19. Defendant knowingly and intentionally infringed the "Horned Hand" Mark and did so for the purpose of causing confusion and diverting customers.

20. Brunetti is informed and believes, and upon such information and belief avers, that each Defendant advertised and promoted infringing products and thereby caused harm to Brunetti. Defendant intended to cause and did cause, directly or

indirectly, third parties to advertise and promote the infringing products, and thereby caused harm to Brunetti.

21. Defendant knew that its acts were infringing.

22. Defendant has, without Brunetti's consent, used in commerce reproductions, infringements, copies and colorable imitations of the "Horned Hand" Mark in connection with the sale, offering for sale and distribution of goods and services on or in connection with such use, as is likely to cause confusion, mistake and deception, thereby violating 15 U.S.C. §1114.

23. Despite Defendant's knowledge that its acts are wrongful, Defendant has committed the acts herein averred in connection with the sale and offer for sale of goods and services.

24. The promotion, sale, offering for sale and distribution by Defendant of its goods and services by means of the infringing acts is likely to cause confusion and mistake and to deceive purchasers and will in fact cause confusion, mistake and deception.

25. Defendant's promotion, sale, offering for sale and distribution of its products by means of the infringing use of the "Horned Hand" Mark has caused a loss of sales of Brunetti's genuine products and will result in the loss of future sales to customers, unless enjoined. Such acts have resulted in sales by Defendant of its own goods and services, which has unjustly enriched Defendant.

26. Unless restrained by this Court, Defendant's acts have caused or are likely to cause Brunetti and the public to suffer great and irreparable damage and injury through, inter alia, (a) a likelihood of confusion, mistake and deception among the relevant purchasing public, (b) falsely suggesting an affiliation between Brunetti and Defendant, despite the absence of such affiliation; and (c) the loss of Brunetti's valuable goodwill and business reputation symbolized by the "Horned Hand" Mark.

27. Brunetti has suffered loss of profits and other damage, and Defendant has earned illegal profits, in an amount to be proven at trial, as the result of Defendant's

aforesaid acts. Such damages and profits should be trebled in accordance with 15 U.S.C. §1117.

28. Defendant's conduct constitutes intentional infringement. Defendant knew its acts were wrongful and persisted in them, despite having been repeatedly warned that such acts were wrongful, and despite Defendant having agreed to cease and not to further commit such acts. Trebled and/or statutory damages, as well as attorneys' fees, should be awarded.

29. Brunetti has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Against Defendant

For False and Misleading Descriptions and Representations and Dilution)

30. Brunetti incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

31. Defendant's products, and images of such products, being promoted at stores and on its website, constitutes the use of words, terms, names, symbols, devices and combinations thereof, false designations of origin and false and misleading descriptions and representation of fact that have:

a. caused or are likely to cause confusion, mistake and deception as to the affiliation, connection and association of Defendant with Brunetti and as to the origin, sponsorship and approval of Defendant's goods and services; and

b. misrepresented, in commercial dealings, the nature, characteristics, qualities and origin of Defendant's goods and services.

32. Brunetti avers that Defendant has made false representations regarding Defendant's goods and services. Such representations were made and will be made in connection with commerce.

33. Defendant, without the consent of Brunetti, has made commercial use of an infringement and copy "Horned Hand" Mark, which use began after the "Horned Hand" Mark became distinctive and famous. Such use has been in commerce.

34. Defendant's acts have caused and will cause if not enjoined, actual dilution of Brunetti's famous and distinctive "Horned Hand" Mark.

35. Defendant's acts have caused and, unless restrained by this Court, will continue to cause Brunetti and the public to suffer great and irreparable damage and injury through, inter alia, (a) a likelihood of confusion, mistake and deception among the relevant purchasing public as to Defendant's infringing website and the advertisements and links therefor; (b) the loss of Brunetti's valuable goodwill and business reputation symbolized by the "Horned Hand" Mark; and (c) actual dilution of the distinctiveness of the "Horned Hand" Mark.

36. Brunetti has suffered loss of profits and other damage, and Defendant has earned illegal profits, in an amount to be proven at trial, as the result of Defendant's aforesaid acts. Such damages and profits should be trebled in accordance with 15 U.S.C. §1117.

37. Brunetti has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Against Defendant

For California and Common-Law Trademark and

Trade Name Infringement)

38. Brunetti incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

39. Brunetti's extensive and continuous use of the "Horned Hand" Mark has created a common law trademark. Defendant has used and infringed the "Horned Hand" Mark by offering for sale, selling and distributing products that bear a copy and close reproduction of the "Horned Hand" Mark.

40. Defendant has acted with oppression, fraud and malice in that Defendant's conduct was intended by Defendant to cause injury to Brunetti, is despicable and was carried on with a willful and conscious disregard of the rights of Brunetti and the public. By reason of the foregoing, Brunetti is entitled to exemplary damages on common law claims against Defendant, in an amount to be proven at trial.

41. Defendant's acts have caused and, unless restrained by this Court, will continue to cause Brunetti and the public to suffer great and irreparable damage and injury.

42. Brunetti has suffered loss of profits and other damage, and Defendant has earned and will earn illegal profits, in an amount to be proven at trial, as the result of Defendant's aforesaid acts. Trebled damages should be awarded. The infringing conduct should be enjoined.

43. Brunetti has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

(Against Defendant

For Injury to Business Reputation and Dilution)

44. Brunetti incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

45. Defendant's use of colorable copies and imitations of the "Horned Hand" Mark are likely to cause injury to Brunetti's business reputation and to dilute the distinctive quality of the "Horned Hand" Mark in violation of California trademark law, including Cal. Bus. & Prof. Code §14330 and the common law.

46. Defendant's acts have caused and, unless restrained by this Court, will continue to cause Brunetti and the public to suffer great and irreparable damage and injury.

47. Brunetti has suffered loss of profits and other damage, and Defendant has earned illegal profits, in an amount to be proven at trial, as the result of Defendant's

aforesaid acts. By reason of the foregoing, Brunetti is entitled to exemplary damages on common law claims against Defendant, in an amount to be proven at trial.

48. Brunetti has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

(Against Defendant

For Unfair Competition and Unfair Practices)

49. Brunetti incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

50. Defendant has engaged in unfair and fraudulent business practices by the acts herein alleged. Brunetti is informed and believes, and upon such information and belief avers, that such acts will continue unless restrained by this Court.

51. Defendant's acts have impaired Brunetti's valuable goodwill, have created a likelihood of confusion, and upon information and belief, have actually confused the public and have otherwise adversely affected Brunetti's business and reputation by use of unfair and fraudulent business practices in violation of the Cal. Bus. & Prof. Code, including, without limitation, §§17200 through 17208, and the common law.

52. Defendant's acts have caused and, unless restrained by this Court, will continue to cause Brunetti and the public to suffer great and irreparable damage and injury.

53. Brunetti has suffered loss of profits and other damage, and Defendant has earned illegal profits, in an amount to be proven at trial, as the result of Defendant's aforesaid acts. However, on the statutory unfair competition claim, Brunetti seeks only disgorgement of profits and does not seek damages at law.

54. Brunetti has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brunetti prays for relief against Defendant that:

A. Defendant, and each of its agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with any of them, be temporarily, preliminarily and permanently enjoined and restrained from:

1. Infringing the "Horned Hand" Mark or using or causing the use of any word, term, name, symbol, device or combination thereof that causes or is likely to cause confusion, mistake or deception;

2. Using or causing the use of any word, term, name, symbol, device or combination thereof that causes or is likely to cause confusion, mistake or deception as to the affiliation, origin or association of Defendant or Defendant's goods or services with Brunetti, or using any false designation of origin or false or misleading description or representation of fact;

3. Diluting or infringing the rights of Brunetti in and to the "Horned Hand" Mark or otherwise damaging Brunetti's valuable goodwill or business reputation;

4. Making any false or misleading statements as hereinabove alleged or otherwise; or

5. Otherwise competing unfairly with Brunetti in any manner.

B. Defendant, within thirty days after the service of the judgment herein, cease infringing.

C. Defendant, within thirty days after the service of the judgment herein, be required to file with this Court and serve upon Brunetti's attorneys a written report under oath setting forth in detail the manner in which Defendant has complied with the judgment.

D. Brunetti recover its lost profits and actual damages from Defendant, in an amount to be proven at trial (except that restitution only, and not money damages, is requested in connection with the California statutory unfair competition claims), and in excess of $75,000, that Defendant be required to account for any of its profits that are attributable to Defendant's acts, and that all such damages be trebled as provided by 15 U.S.C. § 1117 and Cal. Bus. & Prof. Code §14340, including interest thereon at the maximum rate permitted by law.

E. Defendant be required to disgorge its profits (as to the California unfair competition claim).

F. Defendant pay Brunetti damages for its oppression, fraud and malice for Defendant's violation of Brunetti's rights under California law.

G. Brunetti recovers its attorneys' fees.

H. Brunetti recovers its taxable costs and disbursements herein.

I. The Court grant to Brunetti such other and further relief as the Court deems just and proper.

Dated: March 24, 2017

JOHN R. SOMMER
DEVON A. BECKWITH
JOHN R. SOMMER, ATTORNEY-AT-LAW

John R. Sommer

Attorneys for Plaintiff
ERIK BRUNETTI

DEMAND FOR JURY TRIAL

Plaintiff Erik Brunetti hereby demands trial by jury of all issues that are so triable.

Dated: March 24, 2017

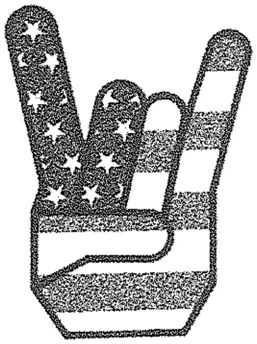
JOHN R. SOMMER
DEVON A. BECKWITH
JOHN R. SOMMER, ATTORNEY-AT-LAW

John R. Sommer

Attorneys for Plaintiff
ERIK BRUNETTI

United States of America

United States Patent and Trademark Office



Reg. No. 3,761,321
Registered Mar. 16, 2010

Int. Cl.: 25

TRADEMARK
PRINCIPAL REGISTER

ERIK BRUNETTI (UNITED STATES INDIVIDUAL)
8033 SUNSET BLVD.
SUITE 146
LOS ANGELES, CA 90046

FOR: BASEBALL CAPS; BELTS; COATS; FOOTWEAR; HATS; JACKETS; LONG-SLEEVED SHIRTS; PANTS; SCARVES; SHIRTS; SHORT-SLEEVED OR LONG-SLEEVED T-SHIRTS; SHORTS; SOCKS; SWEAT PANTS; SWEAT SHIRTS; SWEATBANDS; SWEATERS; T-SHIRTS; TANK TOPS; UNDERWEAR; VESTS; WIND RESISTANT JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 9-1-1994; IN COMMERCE 10-10-2000.

THE STIPPLING IS FOR SHADING PURPOSES ONLY.

THE MARK CONSISTS OF A DESIGN OF A HUMAN HAND WITH THE INDEX AND PINKY FINGERS ERECT AND THE THUMB EXTENDED ACROSS THE OTHER FINGERS AND WITH A STARS AND STRIPES AMERICAN FLAG MOTIF APPEARING THEREON.

SER. NO. 77-833,558, FILED 9-23-2009.

RENEE MCCRAY, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

EXHIBIT 1